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2
3 UNITED STATES DISTRICT COURT
4 WESTERN DISTRICT OF WASHINGTON
5 AT TACOMA

6 LUCAS O. KENNEDY

7 Petitioner,

8 v.

9 UNITED STATES OF AMERICA,

10 Respondent.

CASE NO. C12-5046BHS

ORDER ON MOTION
REGARDING WAIVER OF
ATTORNEY-CLIENT
PRIVILEGE

11 This matter comes before the Court on the Government's motion regarding waiver
12 of attorney-client privilege. Dkt. 4. The Court has considered the pleadings filed in
13 support of and in opposition to the motion and the remainder of the file and hereby denies
14 the motion for the reasons stated herein.

15 On January 9, 2012, Petitioner Lucas O. Kennedy ("Kennedy") filed a motion to
16 vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. Dkt. 1. On March 8,
17 2012, the Government filed a motion asking the Court to issue an order "declaring that,
18 for the limited purpose of resolving the Section 2255 petition, Kennedy has waived his
19 attorney-client privilege." Dkt. 4. On March 19, 2012, Kennedy filed a response to the
20 Government's motion stating that he "agrees, however, that the attorney-client privilege
21 has been waived, and that defense counsel Russell Leonard should be required to answer
22 interrogatories and make admissions" Dkt. 5 at 3. On March 21, 2012, the Federal

1 Public Defender's office ("FPD"), and Kennedy's former counsel Mr. Leonard, filed a
2 brief stating their position with respect to the Government's motion. Dkt. 6. They state
3 that Kennedy should be appointed counsel outside the FPD's office to advise him with
4 respect to his attorney-client privilege with Mr. Leonard, or, in the alternative, that the
5 Court allow "Mr. Kennedy to be present for any discovery proceedings so that he can
6 object and be heard in person concerning questions posed by the government to his
7 former counsel." *Id.*

8 The Court concludes that the Government's motion is denied without prejudice to
9 the motion being renewed if necessary. The Court further orders that Kennedy will be
10 appointed counsel solely for the purpose of advising him on rights regarding attorney-
11 client privilege with his former counsel Mr. Leonard. If, after advice from or objection to
12 the appointment of counsel, Kennedy waives his attorney-client privilege, the Court will
13 hold an evidentiary hearing for the purpose of allowing the Government to elicit
14 testimony from Kennedy's former counsel, Mr. Leonard, solely for the purpose of
15 responding to Kennedy's petition alleging ineffective assistance of counsel.

16 Therefore, it is hereby **ORDERED** that the Government's motion (Dkt. 4) is
17 **DENIED** without prejudice to such motion being renewed. The Court further **ORDERS**
18 that Kennedy will be appointed counsel for the limited purpose discussed above.

19 DATED this 30th day of April, 2012.

20 

21 BENJAMIN H. SETTLE
22 United States District Judge